

## Internal Revenue Service

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Person To Contact:

ID No.

Telephone Number:

In Re:

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PLR-138574-10

Date:  
March 15, 2011

### Legend:

Taxpayer =  
Spouse =  
Family Trust =

Child's Trusts =

Year 1 =  
Year 2 =

Dear :

This letter responds to your authorized representative's letter of September 15, 2010, and subsequent correspondence, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption to several trusts.

The facts and representations submitted are summarized as follows. In Year 1, Taxpayer established an irrevocable trust (Family Trust) for the benefit of Spouse and Taxpayer's three children. Article First, Section A of Family Trust provides that during Taxpayer's lifetime, the trustee has the discretion to distribute trust income and principal to Spouse and Taxpayer's three children. Article First, Section B provides that after Taxpayer's death, if Spouse survives Taxpayer, the trustee is to distribute net income to Spouse and then, if the trustee in his discretion determines that Spouse does not need the income, to Taxpayer's three children at least quarter-annually.

In Year 2, Taxpayer established three irrevocable trusts (Child's Trusts), one each for the benefit of Taxpayer's three children. Family Trust and Child's Trusts have GST potential. In Year 2, Taxpayer made gifts to Family Trust and Child's Trusts.

Taxpayer and Spouse retained a tax professional to prepare their Year 2 Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns. On these forms, Taxpayer and Spouse consented, under § 2513, to treat the gifts made by each in Year 2 as made by both of them. As a result, Spouse's Form 709 reflected one-half of the value of the gifts Taxpayer made to Child's Trusts. Due to the terms of the Family Trust, however, Spouse's Form 709 but did not reflect one-half of the value of the gift Taxpayer made to Family Trust in Year 2. See § 25.2513-1(b)(4) and Rev. Rul. 56-439, 1956-2 C.B. 605.

In addition, on these forms, Taxpayer's and Spouse's respective GST exemption was not allocated to the gifts Taxpayer made to Child's Trusts. Finally, Taxpayer's GST exemption was not allocated to the gift Taxpayer made to Family Trust. Taxpayer and Spouse represent that currently they each have sufficient GST exemption available to allocate to the gifts Taxpayer made to Child's Trusts. In addition, Taxpayer represents that currently he has sufficient GST exemption available to allocate to the gift he made to Family Trust.

Taxpayer and Spouse are requesting an extension of time to allocate their respective GST exemption to the gifts Taxpayer made in Year 2 to Child's Trusts. In addition, Taxpayer is requesting an extension of time to allocate GST exemption to the gift he made in Year 2 to Family Trust.

#### Law and Analysis:

Section 2513(a) provides, generally, that, for gift tax purposes, if the parties' consent, a gift made by one spouse to any person other than his or her spouse shall, for gift tax purposes, be considered as made one-half by the donor spouse and one-half by his or her spouse.

Section 25.2513-1(b)(4) of the Gift Tax Regulations provides, in part, that if one spouse transferred property in part to his spouse and in part to third parties, the consent is effective with respect to the interest transferred to third parties only insofar as such interest is ascertainable at the time of the gift and hence severable from the interest transferred to his spouse.

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a), in effect at the time of the transfer, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the

transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute. See Notice 2001-50, 2001-2 C.B. 189.

Section 2652(a)(2) and § 26.2652-1(a)(4) of the Generation-Skipping Transfer Tax Regulations provide that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Rev. Rul. 56-439, 1956-2 C.B. 605, provides that where a gift is made in trust the terms of which provide that the trustee is to distribute any part of all of the income or principal of the trust to or among the spouse of the donor and any lineal descendants

and/or spouses of lineal descendants of the donor at such times and in such proportions and amounts as the trustee in his or her sole discretion shall determine, the value of the right to receive the income or principal to be distributed to the spouse is not susceptible of determination. See Rev. Rul. 55-303, 1955-1 C.B. 471. Under such circumstances, the gift to the spouse is not severable from the gifts to the other beneficiaries and the gift cannot to any extent be considered as made one-half by the donor and one-half by the donor's spouse within the meaning of § 2513.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer and Spouse are each granted an extension of time of 120 days from the date of this letter to allocate their respective available GST exemption to the gifts Taxpayer made in Year 2 to Child's Trusts. In addition, Taxpayer is granted an extension of time of 120 days from the date of this letter to allocate his available GST exemption to the gift he made in Year 2 to Family Trust. The allocations will be effective as of the date of the gifts and will be based on the fair market value of the gifts for federal gift tax purposes on the dates each gift was made.

Taxpayer and Spouse should make the allocations on supplemental Forms 709 for Year 2. They should file the supplemental Forms 709 with the Cincinnati Service Center at the following address: Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Forms 709.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

Leslie H. Finlow

Leslie H. Finlow,  
Senior Technician Reviewer, Branch 4  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures

Copy for § 6110 purposes  
Copy of this letter